

REMARKS

This amendment is in response to the July 30, 2003, final office action.

In the final office action, Applicant's election of claims 32-46, without traverse, was confirmed, and claims 47 and 48 were withdrawn from further consideration as drawn to a non-elected invention. Claims 32-46 were also rejected as obvious over Bass (GB 2231322) in view of Pierson et al (2,809,896), Comer (5,164,211), applicant's admission of prior art and Wetmore (2,041,586) for the reasons given in Paper No. 5. The final office action stated "Essentially all of the claims are directed to the support per se and not the combination of the support and the fish. The final office action concluded "Since the art taken as a whole teaches to form supports to the shape of the product that it is supporting, it would have been obvious to shape the support so that it mimics the shape of the cut fish."

The specification has been amended to add a "Brief Description of the Drawings." Basis is provided by page 10, line 24 (Fig. 1), page 11, line 4 (Fig. 2), page 11, line 27 (Fig. 3), page 12, line 27 (Fig. 4), page 15, line 20 (Fig. 5), page 17, line 28 (Fig. 6), page 18, line 15 (Fig. 7) and page 19, line 9 (Fig. 8), pursuant to the telephone interview described below.

The preamble of all the claims has been amended by changing "device" to "assemblage", and all the claims have been amended to change "whereby" to "so that", also pursuant to that telephone interview.

Claims 32, 34, 36, 38, 40, 42 and 43 have been amended to move the seafood from the preamble to the body of the claim (so that the claim relates to the combination of the support and the fish).

Claims 32 to 43 have been amended to positively recite the insertion of the cut corners into the joints.

Claims 32 and 34 have also been amended to specify that the corner is inserted into the joint and is protected by the joint. Basis is provided by page 10, lines 2-3. No new matter has been entered.

Claims 36, 38 and 40 have been amended to state that the device maintains and restores the sharpness of corners to preserve the valuable fresh-cut appearance, and varying sizes and shapes of cut seafood can be accommodated. Basis is provided by, for example, page 9, lines 11-13; page 10, line 4, and the Abstract. No new matter has been entered.

Claims 36, 38 and 40 have also been amended to clarify that the supports can contact the contoured surface along a contour corner, to avoid ambiguity as to whether the support contacting a contour corner constitutes the support contacting the contoured surface. Claim 36 was also amended to better define the contoured surface and the contour corners. No new matter has been added.

Claims 36, 38 and 39 have also been amended for grammatical clarity. No new matter has been added.

Claim 40 has also been amended to change "contoured surface" to "contoured side", to avoid a rejection for lack of antecedent basis for "contoured surface."

The above amendments patentably distinguish over the prior art of record because the prior art does not, alone or in combination, disclose or suggest (1) the combination of a boneless cut of seafood having cut corners and substantially rigid supports having joints, wherein the cut corners are inserted in and protected by the joints; or (2) a support that maintains and restores

corners to preserve a valuable fresh-cut appearance and accommodates varying sizes and shapes of seafood fillets and loins.

As explained on page 19, line 27, to page 20, line 8, of the specification, fillets and loins vary in size tremendously, but the device allows two flat surfaces to maintain, to an unexpectedly surprising degree, the valuable fresh-cut appearance of loins and fillets having 5 surfaces and 9 corners that vary with each fillet and/or loin. Even though the device may contain only two flat surfaces, those surfaces support 7 of the 9 corners, and the two major cut surfaces. Further, the device restores and repairs loins and fillets with damaged corners. Other packaging methods damage the corners, including compressing against a single flat base member (Bass; page 5, line 25, to page 6, line 4) and vacuum packing (page 6, lines 20-22). Also, flexible films such as vacuum or poly bagging destroy the corners as well.

Further, the statement in the final office action that "it would be obvious to shape the support so that it mimics the shape of the fish" is clearly wrong, because every fish loin and fillet is different in size and shape. To "mimic the shape of the fish" would require devices of different sizes and shapes for each loin. However, the present invention fixes the size of the device, instead of varying the size of the device, and therefore does NOT "mimic the shape of the fish." The device is compact, because only 2 out of an available 5 surfaces are supported, which means less materials and space used, so the product is more economical. However, the device is unexpectedly effective in preserving the valuable fresh-cut appearance of the loins and fillets, by maintaining and restoring the corners.

Although Bass discloses a cut of seafood and a supporting structure, the cut corner of the seafood is not inserted into and protected by the joints. Figs. 1 and 2 relate only to a single support structure without a joint, Fig. 3 does not disclose a cut of seafood, and Figs. 4 and 5

clearly show substantial separations between the cut ends of the seafood and the ends of the containers. There is no suggestion in Bass to provide support for the corners formed between two or more cut surfaces of a fish.

Bass also teaches that the cut fish placed on the support is conventionally directly vacuumed packed such that the vacuum bag presses the cut fish against the support without support for the cut corners of the cut fish (page 4, lines 17 to 18, figures 1 and 2). This feature is nearly identical to the process to wrap eviscerated fish against a flat base member disclosed in U.S. patent number 2,776,215 to Thomas identified by the Applicant on page 5, lines 25 to 30, and page 6, lines 1 to 7, of the specification of the claimed invention. The Applicant has discussed how such an invention would distort the curved meat surfaces by conforming them to the flat surface of a supporting member (page 9, lines 28 to 30, and page 10, lines 1 to 3). Therefore, Bass clearly teaches away from Applicant's claimed invention. Although Bass discloses an embodiment of the invention being a box having sidewalls (page 4, lines 9 to 11), it is clear from Figure 4 that these sidewalls do not provide support to the cut corners of the fish. Further, with respect to claims 32 to 40, Bass neither discloses nor fairly suggests the combination of fish having cut corners and a device with joints formed by a plurality of flat rigid supports or a V shaped support, where the corners are received and protected in the joints.

Pierson et al discloses the use of an insert for packaging for bakery products which are arranged on either side of the insert (column 2, lines 12 to 13). However, the bakery products are round and do not have corners that are received in and protected by joints. Further, with respect to claims 32 to 40, Pierson does not teach or fairly suggest the use of its device in combination with fish.

Comer discloses bone plastic caps for meat having exposed bone portions (column 2, lines 6 to 13). Comer teaches that the bone plastic cap collapses over and conforms to the meat product it packages (column 6, line 8, to column 7, line 17). Thus, Comer's bone plastic cap conforms to the meat product it packages, while in the claimed invention, the meat conforms to the joints formed by the supports to protect the cut corners of the meat. Furthermore, Comer teaches against the present invention because Comer is directed to meat products with bones, while the present invention is directed to boneless cuts of seafood.

Wetmore discloses the supporting of multiple cuts of fish using a single curved surface, which is the interior wall of a cylinder (column 1, lines 34 to 47), where the uncut contoured surfaces of the fish contact and support each other. Wetmore clearly does not disclose or suggest a plurality of flat rigid surfaces intersecting to form joints. Further, with respect to claims 32 to 40, Wetmore teaches against the invention because it teaches the use of a single curved support, with the abutting fish supporting each other, instead of a plurality of flat supports intersecting to form joints.

The Examiner has not provided any evidence that Applicant's admission of the prior art teaching a cross-sectional cut product would have made the claimed invention "an obvious matter of design." On the contrary, Applicant's admission of the prior art teaches against the transport or shipping of a cross-sectional cut product due to the likely damage and deformation sustained by the cut corners and cut surfaces of fish. Furthermore, Applicant's limitation that curving material be provided to conform to any convexity along the cut corner of a cut fish formed by the removal of the fish backbone is neither disclosed nor suggested by any reference in the prior art, whether singly or in combination.

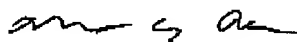
There is absolutely no teaching, suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the teachings of Bass with Pierson et al, Comer, Wetmore, or Applicant's disclosure of the prior art. This obviousness rejection therefore constitutes impermissible hindsight reconstruction.

The courtesy of a telephone interview with the Examiner on October 8, 2003, is gratefully acknowledged. In the interview, the applicant's attorney presented several of the above arguments about Bass and Pierson, and the Examiner then agreed that, except for possible issues of antecedent basis, the claims are patentable over the prior art of record. It was also agreed to change the preamble of each claim to refer to an "assemblage" for clarity and to change "whereby" to "such that" throughout the claims. It was also agreed that allowability of the claims would not be affected if the seafood were cooked. The Examiner also stated that, upon reconsideration, if process claim 47 were amended to positively recite contact between the seafood and the support as in claim 32, then claim 47 would be allowable in this case. Accordingly, claims 47 and 48 have been cancelled and new claims 49 and 50 have been added, which include all the limitations of claims 47 and 48, and also the limitation to contact between the seafood and the support, as in claim 32. It was also agreed that the title could remain unamended and that a brief description of the drawings would be added.

In view of the above, it is submitted that the claims are now in condition for allowance. Reconsideration and withdrawal of the rejections is requested. Allowance of the claims at an early date is earnestly solicited. If the claims would be in condition for allowance except for

minor revisions, the Applicant's attorney courteously invites a telephone interview initiated by the Examiner so that such revisions can be effected by Examiner's Amendment.

Respectfully submitted,



Martin E. Hsia
Registration No. 32,471
CADES SCHUTTE FLEMING & WRIGHT
P.O. BOX 939
Honolulu, Hawaii 96808
Telephone (808) 544-3835